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September 26, 2002

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Communication**
CC Docket Nos. 01-337, 01-338, 02-33, 02-52.

Dear Ms. Dortch:

On September 26, 2002, Donald E. Cain, Gary L. Phillips, Jeffry A. Brueggeman, James K. Smith, and I on behalf of SBC Communications, Inc., along with Jeff Linder of Wiley, Rein and Fielding met with staff members of the Wireline Competition Bureau and the Office of Engineering and Technology. The purpose of our meeting was to provide an overview of the four broadband proceedings currently before the Commission. The attached presentation formed the basis for our discussion.

Pursuant to Section 1.1206(b) of the Commission's rules, this presentation is being electronically filed. I ask that this letter be recognized with the proceedings identified above.

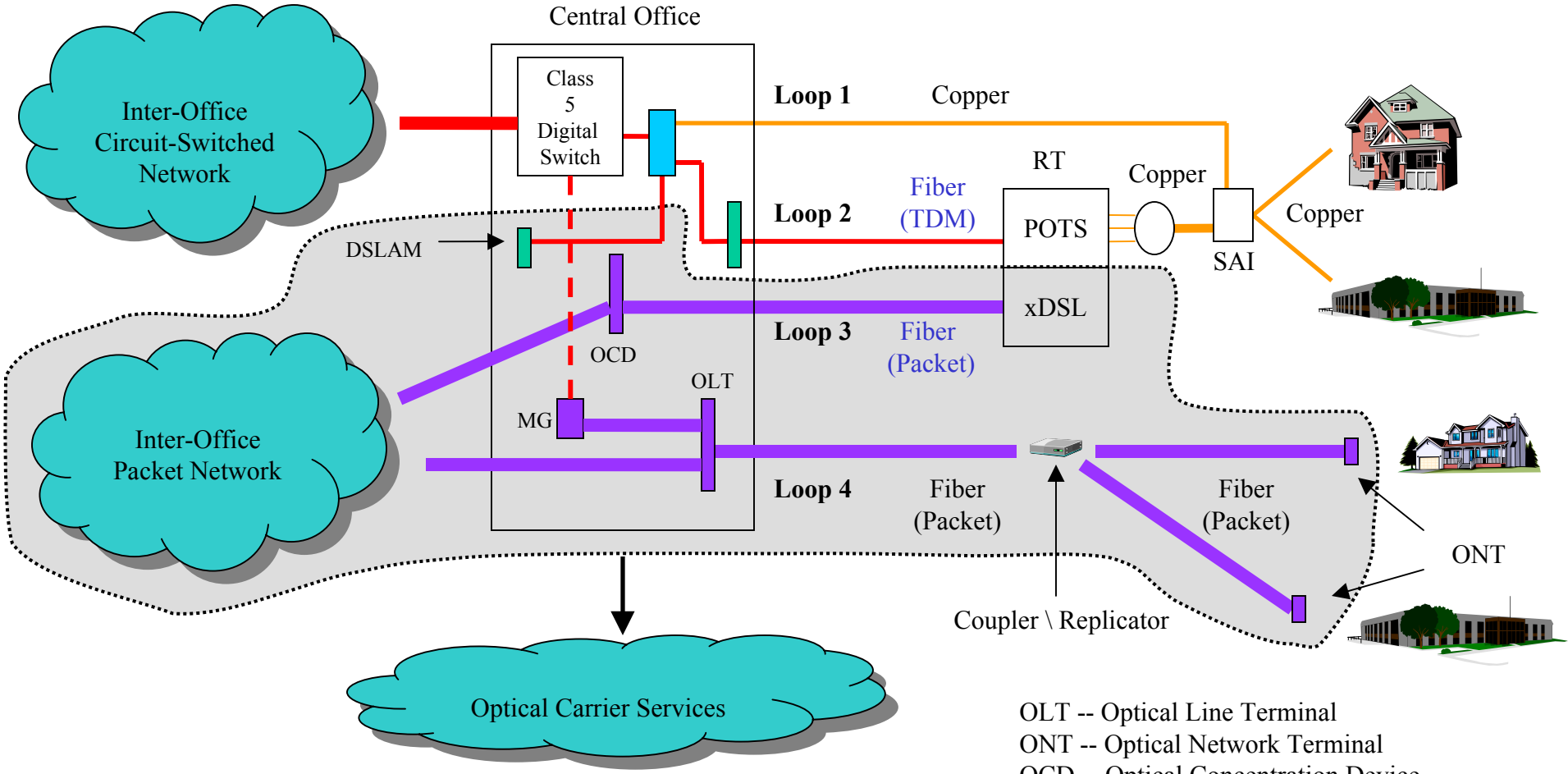
Please call me if you have any questions regarding this matter.

Sincerely,

Jonathan J. Boynton

Unified Broadband Overview

Regulatory Framework: Packet-Based Services



OLT -- Optical Line Terminal
ONT -- Optical Network Terminal
OCD -- Optical Concentration Device
MG -- Media Gateway

- *At a minimum*, packet-based networks and services should be regulated differently from legacy circuit-switched networks

Regulatory Framework: Guiding Principles

- Framework must provide certainty over the long term to encourage investment and stimulate demand for broadband services

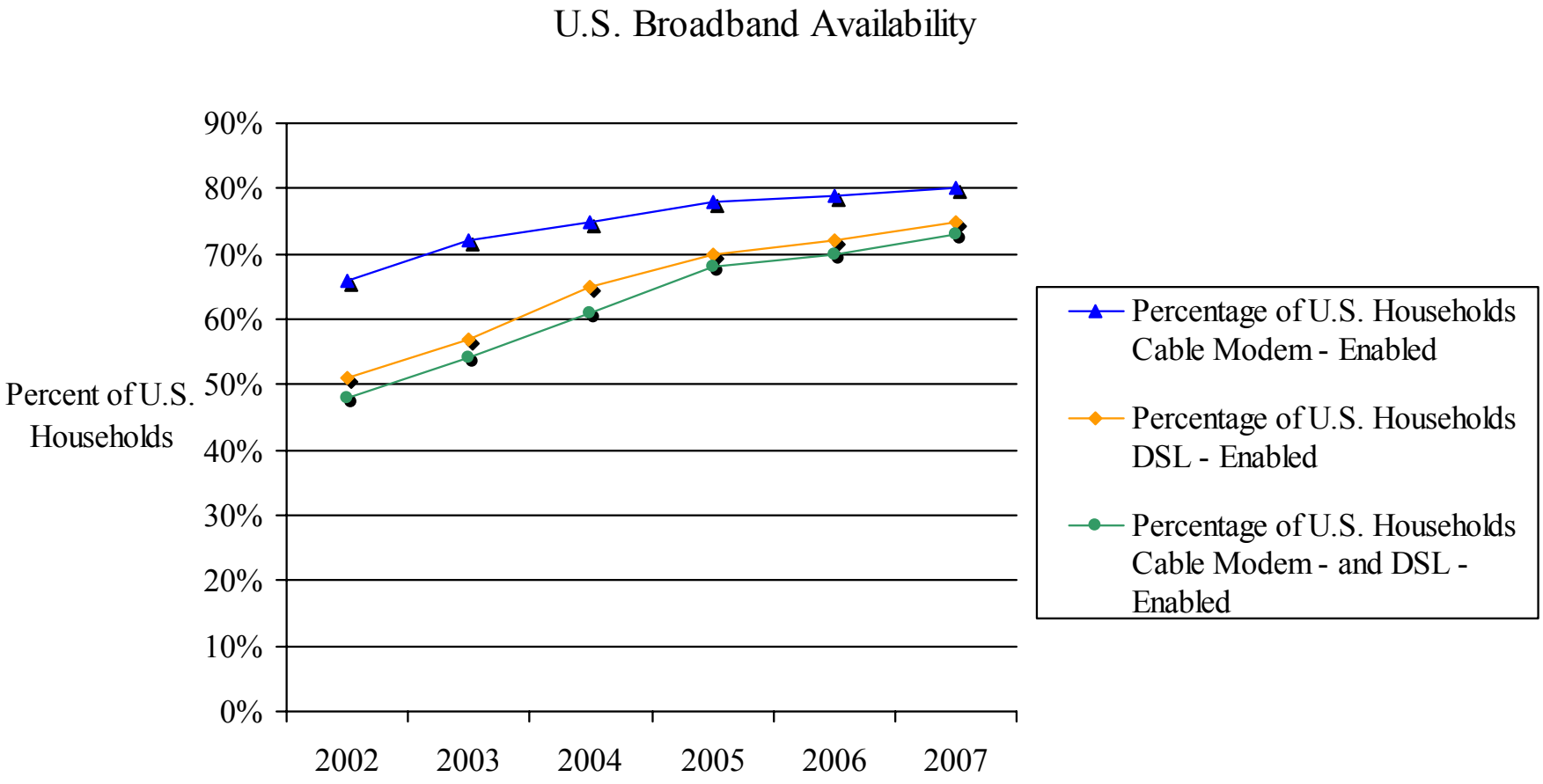
- National broadband policy must provide regulatory certainty across all jurisdictions

- Any broadband regulation must be competitively and technologically neutral across all platforms in three key areas:
  - Competitive access to a provider's broadband *facilities* (UNE)
  - Competitive access to a provider's broadband *services* (ISP access)
  - Design, packaging and pricing of broadband services for consumers (tariffing and *Computer Inquiry* rules)

Regulatory Framework: Key Issues

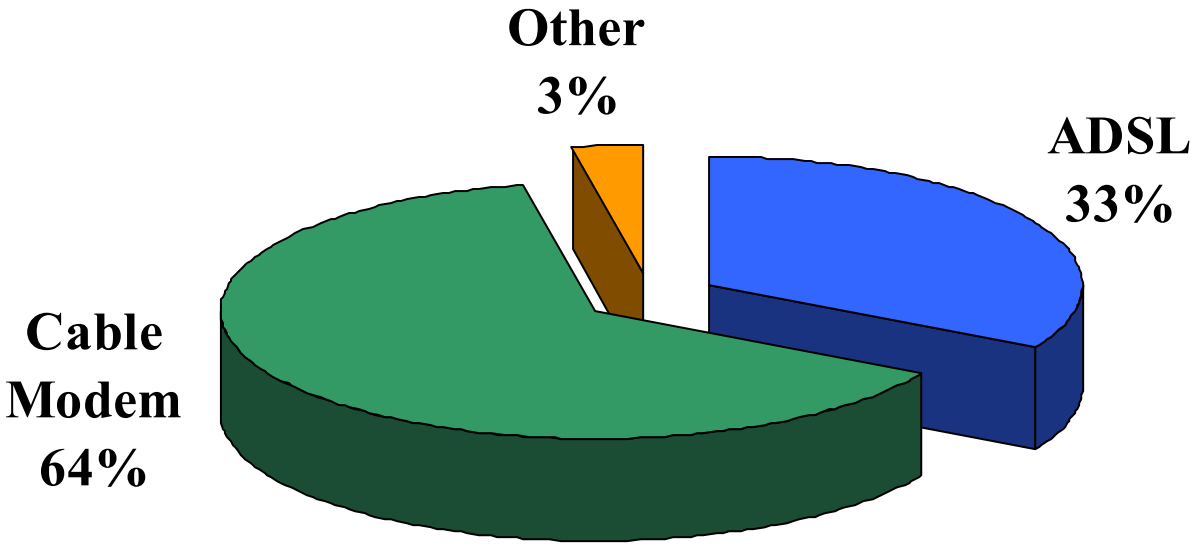
- Unbundling Requirements
  - Do not extend unbundling to packet/fiber facilities
- Dominant Carrier Regulation
  - Classify ILECs as non-dominant in the provision of broadband services and forbear from dominant carrier regulation (e.g., tariffs, CEI)
- *Computer Inquiry* Rules
  - Eliminate outdated rules that interfere with broadband technology integration and innovation (e.g., *Computer II* separation of transmission from information service)
- ISP Access
  - Eliminate mandatory ISP broadband access or adopt uniform cable/wireline ISP broadband access requirement

Mass Market: Cable is More Widely Available



(*2002 Broadband Subscriber Forecast*, Yankee Group (August 2002))

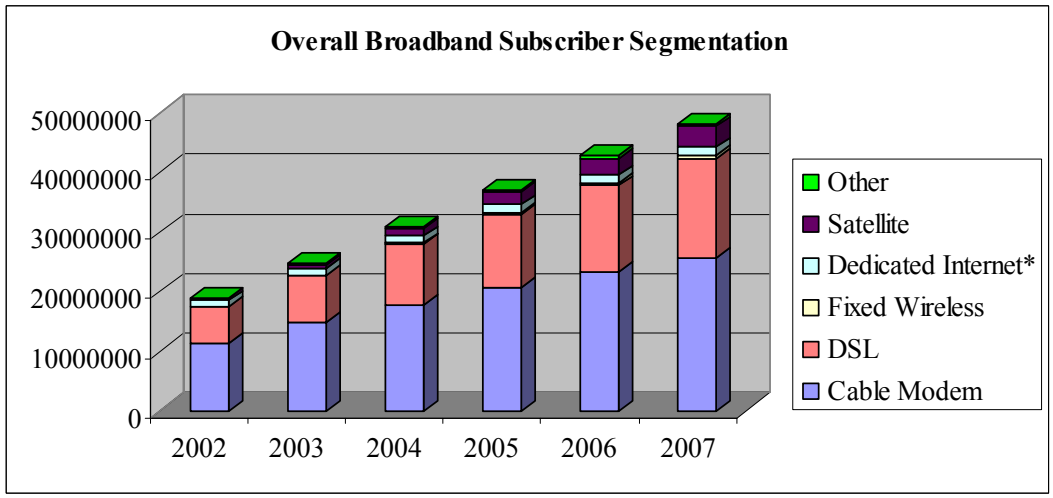
Mass Market: Cable Is Market Leader



- FCC *High-Speed Services For Internet Access* (rel. July 23, 2002)
  - Cable Modem: 7 Million subscribers EOY 2001
  - ADSL: 3.6 Million subscribers EOY 2001

- D.C. Circuit noted that "[t]he Commission's own findings … repeatedly confirm both the robust competition, and the dominance of cable, in the broadband market." (*USTA v.FCC*)

Mass Market: Cable Will Continue to Dominate



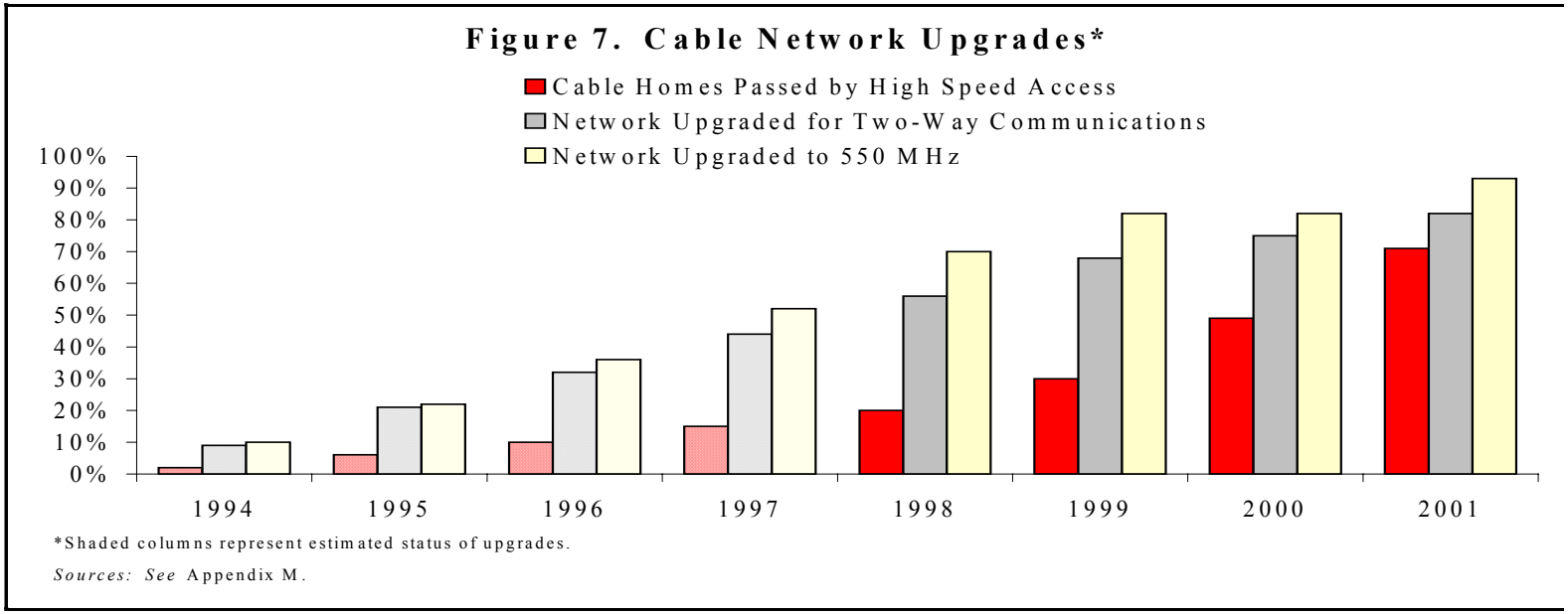
	2002	2003	2004	2005	2006	2007
Cable Modem	11,282,000	14,730,000	17,827,000	20,709,000	23,200,000	25,529,000
DSL	6,120,000	7,933,000	10,035,000	12,187,000	14,487,000	16,639,000
Fixed Wireless	69,230	110,475	212,129	345,020	480,181	623,390
Dedicated Internet*	990,000	1,090,000	1,160,000	1,210,000	1,260,000	1,310,000
Satellite	346,000	640,000	1,384,000	2,162,000	2,845,000	3,510,000
Other	181,000	220,000	270,000	338,000	415,000	480,000

* Includes HDSL and HDSL2

"With over 7 million consumer and 500,000 business subscribers at the end of 2001, cable modem will easily maintain its leadership as the most important broadband connectivity technology in the United States."

(*2002 Broadband Subscriber Forecast*, Yankee Group (August 2002))

Mass Market: Why Cable Will Continue to Dominate

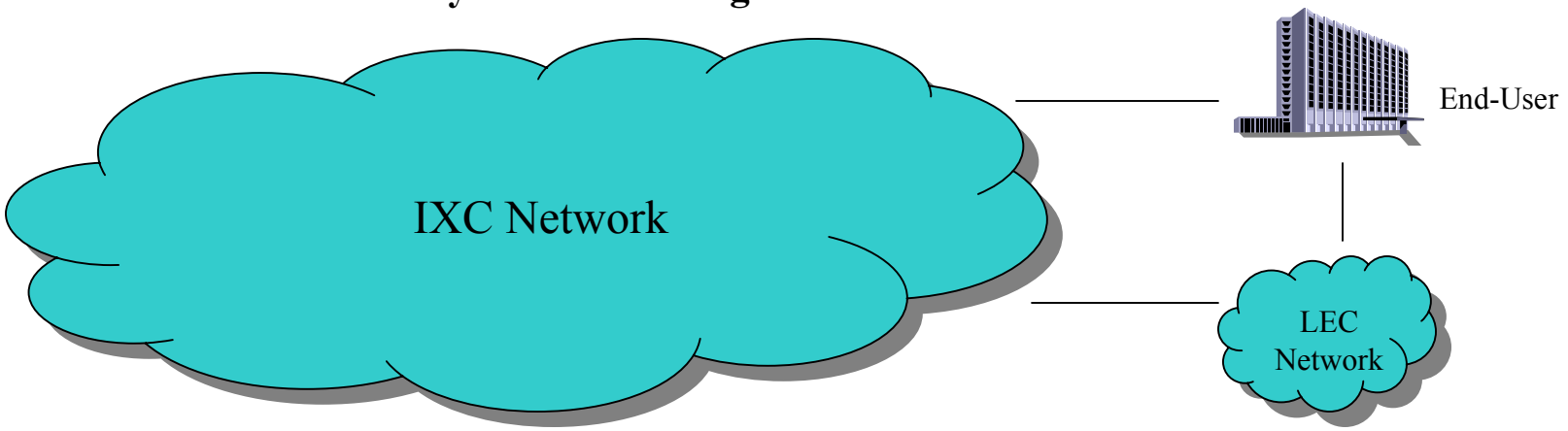


(UNE Fact Report 2002 - V 28)

- Cable *already* has robust broadband network that can deliver integrated package of voice, data, and video services
- In order to match this package, ILECs would have to deploy fiber-to-the-home (FTTH)
  - xDSL is merely a transition technology
  - FTTH requires time and huge investment

Larger Business: IXCs Dominate

ATM and Frame Relay Service Arrangements



- Customers prefer single provider for "all distance" broadband needs
- Market predominantly served by IXC end-to-end services
  - Evidenced by IXCs' overwhelming share of ATM and Frame Relay revenues
    (Approximately 85% according to R. Kaplan, IDC Reports 2001-2006 Analysis Forecast (2002))
  - Big 3 IXCs generally avoid interfacing with SBC's ATM and Frame Relay networks and do not use SBC's ATM and Frame Relay services as wholesale inputs
- ILECs' ATM and Frame Relay services have limited interstate application

Larger Business: Facilities-Based Competition

- Extensive packet and fiber deployment by IXCs and CLECs:
  - ALTS *Annual Report on State of Local Competition 2002*
    - Data switch deployment grew from 874 in 1998 to 9,524 in 2001
    - 339,000 miles of fiber
  - Fiberloops.com
    - 2,000 local fiber networks from 100+ companies

- AT&T facilities (website):
  - 51,000 miles of fiber
  - 60+ interconnected SONET rings
  - 620+ POPs

- MCI/WorldCom facilities (website):
  - ATM and Frame Relay in 350+ MSAs
  - 700 POPs

Larger Business: IXCs Will Continue to Dominate

- "Bell companies don't present a major threat to WorldCom, Inc.'s business-service group … [they] don't have the products, systems, or sales forces to attack the middle and high-end segments of the business-service market."

  (Brian Brewer, Chief Marketing Officer for WorldCom - TR Daily May 7, 2002)

- IXCs are only broadband providers with ubiquitous nationwide networks
  - Easy for IXCs to displace ILEC interstate broadband services

- IXCs have large embedded customer base subject to long-term contracts

- SBC has gained only *de minimis* share of interLATA ATM and Frame Relay market in states where it has obtained § 271 approval

Unbundling: Impedes Broadband Investment and Competition

- Unbundling diminishes incentive to make risky investment
  - Increases costs: Deployment and operational
    - Unbundling fiber is more expensive than copper
      (See March 22, 2002 Ex Parte Filing)
    - Precludes deployment of most efficient network architecture
  - Decreases revenues: Limits upside return on investment
  - Deprives ILEC of control over its investment
    (See August 1, 2001 Ex Parte Filing)

- Unbundling undermines facilities-based competition
  - Unbundling would prevent ILEC broadband networks from being viable inter-modal competitor to cable
  - CLEC use of ILEC investment to price arbitrage existing business rates would come at the expense of mass market deployment

Unbundling: Contrary to 1996 Act

- No impairment without access to unbundled broadband facilities
  - Significant inter-modal competition
  - Cable is market leader
  - No impairment, by definition, for new broadband investment

- Even if possible impairment, "at a minimum"considerations preclude unbundling
  - Section 706 requires that the Commission promote broadband deployment
  - Commission previously recognized that unbundling could stifle investment and facilities-based competition in nascent broadband market

Unbundling: Scope of Relief

- No unbundling of broadband investment and facilities. *At a minimum*, this includes:
  - Packet equipment and integrated fiber with no exceptions
    - Reject UNE proposals (e.g., ELP, definitional changes to loop, advanced electronics, packet switching) that equate to broadband "UNE platform"
  - Dark fiber deployed in loop

- No line sharing

- Preempt state attempts to extend unbundling to broadband
  - Commission's § 251(d)(2) determinations must be binding on the states
  - State actions create uncertainty and impede broadband deployment
  - States lack jurisdiction over all inter-modal competitors and thus can not harmonize broadband regulation

Non-Dominant: Market Definition

- Commission has made determination that broadband is a discrete and nascent market

- The market for broadband services should be defined as:
  - All packet-based services
  - High-capacity (DS1 and above) services that are not circuit switched

- ILECs lack market power in both broadband product market segments: mass market and larger business

- SBC proposes a bright line approach to non-dominant relief that is targeted and well defined:
  - Packet-based services and very high-capacity optical services (155 Mbps and higher) that are not circuit switched

Non-Dominant: Relief Will Stimulate Competition

- Dominant carrier regulation of ILEC broadband services harms consumers and competition
  - Dampens ability and incentive to offer competitive price discounts
  - Impedes ability to rapidly respond to changes in demand and costs
  - Imposes additional costs
  - Prevents consumers from obtaining services tailored to their needs

- CEI requirements negatively impact broadband innovation and restrict competition
  - Inhibit technology integration
  - Impede network evolution
  - Constrain ability to offer new services

Non-Dominant: Regulation is Unnecessary for Competitive Market

- CLECs will continue to have access to ILEC inputs
  - Unbundled copper loops
  - Tariffed DS1 and DS3 special access
  - DS1 UNEs, subject to granular impairment analysis

- Tariffs not needed for ISP broadband access
  - Narrowband ISP access not affected
  - Commission correctly de-linked ISP broadband access from Title II regulation in *Cable Declaratory Ruling*
  - U.S. Internet Industry Association (USIIA) agrees that market agreements preferable to tariffs

Non-Dominant: Scope of Relief

- Commission should classify ILECs as non-dominant in the provision of broadband services to larger business and mass market customers
  - Mass market services include DSL and successor services
  - Larger business services include ATM, Frame Relay, Ethernet and optical services that are not circuit switched

- As with AT&T non-dominant classification, Commission should forbear from all dominant carrier regulation, including:
  - Tariff and price regulation
  - *Computer III* ONA and CEI requirements

Computer Inquiry Rules: Unnecessary and Anti-Competitive

- Rules are relic of "one-wire" world
  - Premise inapplicable to broadband market (vertically integrated Bell system vs. nascent market with inter-modal competition)

- Rules are harmful to broadband investment and innovation
  - "Radical surgery" increases costs and imposes inefficient network design
  - Preclude provision of new innovative services by forcing separation of transmission and computer processing capabilities for information services
  - Create rigid framework for ISP broadband access arrangements

- Asymmetric application of rules is profoundly anti-competitive
  - Confers significant competitive advantage on market leaders in above areas

Computer Inquiry Rules: Relief

- Eliminate *Computer Inquiry* rules for wireline broadband, just as the Commission has for the market leaders
  - Confirm that integrated wireline broadband Internet access is an information service
  - No requirement to artificially separate broadband transmission and computer processing capabilities for information services
  - Address ISP access as a separate issue under Title I

- Establish uniform national regulatory framework for *all* broadband information services under Title I

ISP Broadband Access: Consistent Approach is Essential

- Cable/wireline networks are functionally equivalent for providing ISP broadband access
  - Cable/wireline broadband networks are packet based
  - Purported "last mile" differences are red herring
  - No technical basis for unique wireline requirement
- Same cost/benefit analysis must be conducted for cable/wireline
  - Infrastructure and network management costs are similar
  - Operational costs to support multiple ISPs are similar
  - Irrational to impose mandatory ISP access requirement only on secondary providers
- Asymmetric ISP broadband access requirement is disastrous for broadband competition
  - Cable acknowledges costs, both initial and ongoing
  - Cable warns of chilling effect on investment and innovation

ISP Broadband Access: Harmonize Cable and Wireline Rules

- Eliminate mandatory ISP broadband access (see SBC/USIIA MOU) or establish uniform cable/wireline ISP broadband access requirement

- Establish consistent ISP broadband access rules for cable/wireline broadband information services under Title I
  - Commission should take hands-off approach and retain jurisdiction if problems arise
  - Any mandatory ISP broadband access requirement should be flexible and accommodate creative arrangements (e.g., revenue sharing and joint provisioning)

Benefits of Comprehensive Approach

- Establishes bright line for limiting legacy regulation to legacy circuit-switched network
- Removes regulatory impediments to broadband deployment (supply) and provision of new innovative broadband services (demand)
- Applies consistent regulation across competing broadband platforms
- Minimizes regulatory entanglements in technology, while maintaining jurisdiction if problems arise
- Provides a stable, long-term regulatory framework for broadband

Implementation of Broadband Framework

- Triennial Review: Do not extend unbundling to packet/fiber investment
  - Stimulate investment and facilities-based competition
- ILEC Broadband Non Dominance: Eliminate dominant carrier regulation of ILEC packet-based services and very high-capacity optical services
  - Remove regulatory costs and service constraints
- Wireline Title I: Eliminate *Computer Inquiry* rules that impede new innovative broadband services
  - Provide flexibility in design and packaging of services
  - Adopt uniform cable/wireline ISP broadband access requirement
- Cable Title I: Address ISP broadband access consistently for cable/wireline broadband